

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9 VAC 5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

Part II.
Permit Procedures.

ARTICLE 5.
State Operating Permits.
(replaces 9 VAC 5-80-40)

9 VAC 5-80-800.	Applicability.
9 VAC 5-80-810.	Definitions.
9 VAC 5-80-820.	General.
9 VAC 5-80-830.	Applications.
9 VAC 5-80-840.	Application information required.
9 VAC 5-80-850.	Standards and conditions for granting permits.
9 VAC 5-80-860.	Action on permit application.
9 VAC 5-80-870.	Application review and analysis.
9 VAC 5-80-880.	Compliance determination and verification by testing.
9 VAC 5-80-890.	Monitoring requirements.
9 VAC 5-80-900.	Reporting requirements.
9 VAC 5-80-910.	Existence of permit no defense.
9 VAC 5-80-920.	Circumvention.
9 VAC 5-80-930.	Compliance with local zoning requirements.
9 VAC 5-80-940.	Transfer of permits.
9 VAC 5-80-950.	Termination of permits.
9 VAC 5-80-960.	Changes to permits.
9 VAC 5-80-970.	Administrative permit amendments.
9 VAC 5-80-980.	Minor permit amendments.
9 VAC 5-80-990.	Significant amendment procedures.
9 VAC 5-80-1000.	Reopening for cause.
9 VAC 5-80-1010.	Enforcement.
9 VAC 5-80-1020.	Public participation.
9 VAC 5-80-1030.	General permits.
9 VAC 5-80-1040.	Review and evaluation of article.

9 VAC 5-80-800. Applicability.

A. Within the limits of subsection C of this section, the provisions of this article apply to the operation of any stationary source or emissions unit of a regulated air pollutant.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Permits may be issued under this article in situations including, but not limited to, the following:

1. At the request of any owner:

a. To designate a stationary source or emissions unit as a synthetic minor;

b. To combine a stationary source's or emissions unit's requirements under multiple permits into one permit; or

c. To implement emissions trading requirements.

2. At the discretion of the board:

a. To cap the emissions of a stationary source or emissions unit contributing to a violation of any air quality standard; or

b. To establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

D. A permit may be issued under this article regardless of other permits in force provided that it does not contravene any provision of any of the other permits.

E. For permits issued pursuant to the provisions of subsection C 2 of this section, a permit application is not required from the stationary source or emissions unit, and the provisions of 9 VAC 5-80-830 and 9 VAC 5-80-860 do not apply.

9 VAC 5-80-810. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a pollutant from any stationary source or emissions unit. In general, actual emissions as of a particular date shall equal the highest annual rate, in tons per calendar year, at which the stationary

source or emissions unit actually emitted a pollutant during the consecutive five-year period which precedes the particular date and which is representative of normal stationary source or emissions unit operation. The board may allow the use of a different historical time period upon a determination that it is more representative of normal stationary source or emissions unit operation. Actual emissions shall be calculated using the stationary source's or emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Allowable emissions" means the emission rates of a stationary source or emission unit calculated by using the maximum rated capacity of the emissions units within the stationary source or emissions unit (unless the stationary source or emissions unit is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

1. Applicable emission standards;
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date; or
3. Any other applicable emission limitation, including those with a future compliance date.

"Complete application" or "complete request" means that the application or request contains all the information necessary for processing the application or request. Designating an application or request complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Contributing to a violation" means, in reference to the potential of a stationary source or emissions unit to emit any of the following pollutants, an air quality impact greater than any of the following amounts:

Carbon monoxide - $500 \mu\text{g}/\text{m}^3$, 8-hour average

Carbon monoxide - $2,000 \mu\text{g}/\text{m}^3$, 1-hour average

Nitrogen dioxide - $1 \mu\text{g}/\text{m}^3$, annual average

PM₁₀ - $1 \mu\text{g}/\text{m}^3$, annual average

PM₁₀ - $5 \mu\text{g}/\text{m}^3$, 24-hour average

Sulfur dioxide - $1 \mu\text{g}/\text{m}^3$, annual average

Sulfur dioxide - $5 \mu\text{g}/\text{m}^3$, 24-hour average

Sulfur dioxide - $25 \mu\text{g}/\text{m}^3$, 3-hour average

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent.
- b. Contain a legal obligation for the owner to adhere to the terms and conditions.
- c. Do not allow a relaxation of a requirement of the implementation plan.
- d. Are technically accurate and quantifiable.
- e. Identify an averaging time that allows at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance.
- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new source.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the Administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

- a. Emission standards, alternative emission standards, alternative emission limitations and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- c. All terms and conditions in an operating permit issued pursuant to a

program approved by the U.S. Environmental Protection Agency in accordance with 40 CFR Part 70, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

d. Limitations and conditions that are part of the implementation plan.

e. Limitations and conditions that are part of a permit issued under the new source review program.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the U.S. Environmental Protection Agency into an implementation plan as meeting the U.S. Environmental Protection Agency's minimum criteria for federal enforceability, including adequate notice and opportunity for the U.S. Environmental Protection Agency and public comment prior to issuance of the final permit and practicable enforceability.

g. Limitations and conditions in a regulation of the board or in a Virginia program that has been approved by the U.S. Environmental Protection Agency under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the U.S. Environmental Protection Agency has legal authority to create.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-1030.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

"New source review program" means a program for the preconstruction review and permitting of new sources or emissions units or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or which is shown by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or future emissions data.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a stationary source.

"Potential to emit" means the maximum capacity of a stationary source or emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source or emissions unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source or emissions unit.

"Regulated air pollutant" means any of the following:

- (1) Nitrogen oxides or any volatile organic compound.
- (2) Any pollutant for which an ambient air quality standard has been promulgated.
- (3) Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
- (4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.
- (5) Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR 68.
- (6) Any pollutant subject to a regulation adopted by the board.
- (7) Any pollutant subject to regulation under the Virginia Air Pollution Control Law.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source, but do not come from the major stationary source itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State-enforceable" means all limitations and conditions which are enforceable as a practical matter, including those requirements developed pursuant to 9 VAC 5-170-160,

requirements within any applicable order, regulation of the board, or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21).

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable limits, by federally enforceable limits, or by both so as to place that stationary source below the threshold at which it would be subject to permit or other requirements in regulations of the board or in the federal Clean Air Act.

9 VAC 5-80-820. General.

A. The board may issue permits whose applicability is limited to one specific pollutant or to multiple specific pollutants emitted by a stationary source or emissions unit. It may also issue permits whose applicability is limited to one specific emissions unit or multiple specific emissions units within a stationary source. The issuance of such permits may occur in any of the situations specified in 9 VAC 5-80-800 C.

B. The board may combine the requirements of and the permits for emission units within a stationary source or emissions unit subject to this chapter into one permit. The board may likewise combine the requirements of and applications for permits for emission units within a stationary source or emissions unit required by this chapter into one application.

C. Permits issued under the provisions of 9 VAC 5-80-10 or Article 8 (9 VAC 5-80-1700 et seq.) or 9 (9 VAC 5-80-2000 et seq.) of this part may be considered as having met the requirements of this article but shall be subject to the provisions of 9 VAC 5-80-950, 9 VAC 5-80-960, 9 VAC 5-80-970, 9 VAC 5-80-980, 9 VAC 5-80-990, 9 VAC 5-80-1000, and 9 VAC 5-80-1010.

D. No provision of regulations of the board shall limit the power of the board to issue an operating permit pursuant to this article in order to remedy a condition that may cause or contribute to the endangerment of human health or welfare.

E. Any decisions of the board made pursuant to this article may be appealed pursuant to Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

F. In order for a permit issued pursuant to this article to be federally enforceable, the following conditions shall be met:

1. The permit shall include a legal obligation that the permittee adhere to the terms and limitations of the permit.

2. The permit shall conform to the requirements of this article and to the requirements of any regulations of the U.S. Environmental Protection Agency that form the basis for this article.

3. The permit shall contain emission limits, controls, and other requirements that are at least as stringent as any applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan.

4. The emission limits, controls, and other requirements of the permit shall be permanent, quantifiable, and enforceable as a practical matter.

5. The permit shall be issued subject to the public participation requirements of 9 VAC 5-80-1020.

6. A copy of the proposed (draft) and final permit shall be sent to the U.S. Environmental Protection Agency on a timely basis.

G. Notwithstanding the provisions of subsection F of this section, no provision of this article shall be interpreted to prevent the board from issuing a permit that is not federally enforceable and, if appropriate, seeking approval of the permit under the then-current regulations and policies of the U.S. Environmental Protection Agency.

9 VAC 5-80-830. Applications.

A. For permits issued under the provisions of 9 VAC 5-80-800 C 1, a single complete application is required identifying each emissions unit to be covered by the permit. The application shall be submitted according to procedures approved by the board. Where several units are included in one stationary source, a single complete application shall be submitted covering all units which are to be permitted in the stationary source. A separate complete application is required for each stationary source.

B. Any application form, report, or compliance certification submitted to the board shall meet the requirements of 9 VAC 5-20-230.

9 VAC 5-80-840. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit under the provisions of 9 VAC 5-80-800 C 1 shall include, but not be limited to, the following:

1. Company name and address (or plant name and address if different

from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit to be covered by the permit.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subsections B 3 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

D. For permits issued pursuant to the provisions of 9 VAC 5-80-800 C 2, the provisions of subsections A and B of this section do not apply.

E. For permits issued pursuant to the provisions of 9 VAC 5-80-800 C 2, the board may request any information or documentation that it deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

9 VAC 5-80-850. Standards and conditions for granting permits.

A. A permit may be granted pursuant to this article if it is shown to the satisfaction of the board that the following standards and conditions will be met:

1. The stationary source or emissions unit shall operate without causing a violation of the applicable provisions of regulations of the board;

2. The stationary source or emissions unit shall be in compliance with all applicable emission standards or meet the provisions of any administrative enforcement mechanism issued pursuant to 9 VAC 5-170-120; and

3. The stationary source or emissions unit shall operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted so as not to prevent or interfere with the attainment or maintenance of any applicable ambient air quality standard.

B. Permits may be granted to stationary sources or emissions unit located in nonattainment areas provided the requirements of subsection A 1 and 2 of this section are met.

C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued; or

b. The emissions rate based on the potential to emit of the emissions unit.

3. Emission standards shall only include limitations that are determined by the board to be achievable through application of production processes or available

methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

4. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. In consideration of the factors specified below, the owner may propose and the board may establish an alternative emission standard provided the owner demonstrates to the satisfaction of the board that it meets the standards and conditions in 9 VAC 5-80-850 A and C 2 and is enforceable as a practical matter.

1. The impact upon the ability of the stationary source or emissions unit to operate in a competitive and efficient manner.

2. The previous efforts to reduce actual emissions taken at the owner's initiative.

3. The technological and economic practicality of reducing emissions.

4. The impact upon the availability and cost of fuels and process materials.

E. An emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of 9 VAC 5-80-850 A and the increased emission levels would not make the stationary source or emissions unit subject to the new source review program.

F. Operating permits issued under this article may contain, but not be limited to, any the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards as set out in this section.

2. Conditions necessary to enforce emission standards. Conditions to provide enforceability may include, but not be limited to, the following:

a. Limit on fuel sulfur content;

b. Limit on production rates with time frames as appropriate to support the emission standards in this section;

c. Limit on raw material usage rate; and

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, the following:

- a. Pressure indicators and required pressure drop;
- b. Temperature indicators and required temperature;
- c. pH indicators and required pH; and
- d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Compliance schedules.

11. Other requirements as may be necessary to ensure compliance with the applicable state and federal regulations.

G. Permits granted pursuant to this article shall contain terms and conditions to the extent necessary to ensure that:

- 1. The permit meets the requirements of this article;
- 2. The permit is enforceable as a practical matter; and
- 3. The permittee adheres to the terms and conditions of the permit.

9 VAC 5-80-860. Action on permit application.

A. After receipt of an application or any additional information, the board shall

advise the applicant in writing of any deficiency in such application or information no later than 30 days after receipt of the application or additional information.

B. If no public comment period is required, processing time for a permit is normally 90 days following receipt of a complete application. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required. Processing steps may include, but not be limited to:

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-870 and the preliminary decision of the board;

2. Inspection of the stationary source or emissions unit, provided an inspection has not been conducted within the last six months;

3. Public comment period, when required by 9 VAC 5-80-1020; and

4. Completion of the final review and analysis and the final decision of the board.

C. The board will normally take action on all complete applications after completion of the review and analysis, unless more information is needed. The board shall issue the permit or notify the applicant in writing of its decision, with its reasons, not to issue the permit.

D. Within five days after receipt of the permit pursuant to 9 VAC 5-80-860 B, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

E. Appeals of decisions rendered pursuant to this article shall follow the procedures outlined in Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

9 VAC 5-80-870. Application review and analysis.

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-850 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if each emissions unit that is to be permitted within the stationary source is equipped to comply with all applicable emission standards.

2. Applications may be subject to an air quality analysis to determine the impact of pollutant emissions.

B. If the board has reason to believe that a source may be in violation of an air quality standard, it may require an air quality impact model. All applications of air quality modeling involved in any air quality analysis required by this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

C. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the board must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to notice and opportunity for public comment under 9 VAC 5-80-1020.

9 VAC 5-80-880. Compliance determination and verification by testing.

A. The board may require owners of sources subject to this article to conduct such tests as are necessary to determine the type or amount or both of the pollutants emitted from the stationary source or emissions unit or whether the stationary source or emissions unit will be in compliance with any provisions of any regulation of the board. Such tests shall be conducted in a manner acceptable to the board.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9 VAC 5-40-10 et seq.) of 9 VAC 5 Chapter 40, Part I (9 VAC 5-50-10 et seq.) of 9 VAC 5 Chapter 50, and Part I (9 VAC 5-60-10 et seq.) of 9 VAC 5 Chapter 60, as applicable, or by other means acceptable to the board.

9 VAC 5-80-890. Monitoring requirements.

A. The board may require owners of stationary sources subject to this article to install, calibrate, operate and maintain equipment for continuously monitoring and recording emissions or process parameters or both, and establish and maintain records, and make periodic emission reports as the board may prescribe. These requirements shall be conducted in a manner acceptable to the board.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9 VAC 5-40-10 et seq.) of 9 VAC 5 Chapter 40, Part I (9 VAC 5-50-10 et seq.) of 9 VAC 5 Chapter 50, and Part I (9 VAC 5-60-10 et seq.) of 9 VAC 5 Chapter 60, as applicable, or by other means acceptable to the board.

9 VAC 5-80-900. Reporting requirements.

A. The board may require owners of stationary sources subject to this article to establish and maintain records, provide notifications and reports, revise reports, report

emission tests or monitoring results in a manner and form and using procedures as the board may prescribe. Any records, notifications, reports, or tests required under this section shall be retained by the owner for at least three years following the date of such records, notifications, reports or tests. If an owner wishes to request the establishment of an average emissions baseline for a period longer than three years, that owner must maintain records for that period.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9 VAC 5-40-10 et seq.) of 9 VAC 5 Chapter 40, Part I (9 VAC 5-50-10 et seq.) of 9 VAC 5 Chapter 50, and Part I (9 VAC 5-60-10 et seq.) of 9 VAC 5 Chapter 60, as applicable, or by other means acceptable to the board.

C. If a stationary source or emissions unit is shut down, the owner shall notify the board within six months of the date the stationary source or emissions unit is shut down and the provisions of 9 VAC 5-80-950 shall apply.

9 VAC 5-80-910. Existence of permit no defense.

The existence of a permit under this article shall not constitute a defense to a violation of the Virginia Air Pollution Control Law or regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

9 VAC 5-80-920. Circumvention.

Regardless of the exemptions provided in this article, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a stationary source which, except for the pattern of ownership or development, would otherwise require a permit.

9 VAC 5-80-930. Compliance with local zoning requirements.

No provision of this article or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the stationary source is located provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9 VAC 5-80-940. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership or name change of a stationary source,

the new owner shall abide by any current permit issued to the previous owner or to the same owner under the previous source name. The new owner shall notify the board of the change in ownership or source name or both within 30 days of the transfer or name change.

9 VAC 5-80-950. Termination of permits.

A. A permit or any amendment thereof shall be valid for the life of the source unless the board terminates the permit under the conditions of subsection B or subsection C of this section.

B. The board may terminate a permit with the consent of the owner for good cause shown by the owner or on its own motion provided that the termination is accomplished in accordance with the provisions of regulations of the board and the Administrative Process Act.

C. Upon a final determination that a stationary source or emissions unit is shut down permanently, the board shall revoke any permits for that source or emissions unit in accordance with 9 VAC 5-20-220.

9 VAC 5-80-960. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-970 through 9 VAC 5-80-1000.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80 shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-970 through 9 VAC 5-80-990.

2. A request for a change by a permittee shall include a statement of the

reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1000.

9 VAC 5-80-970. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-940 have been fulfilled.

4. The combining of permits as provided in 9 VAC 5-80-800 C 1 b.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a complete request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public under 9 VAC 5-80-1020. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-980. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable regulatory requirement;

2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of

demonstrating compliance or a relaxation of reporting or record keeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant amendment under 9 VAC 5-80-990; or as an administrative permit amendment under 9 VAC 5-80-970.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit provided there is made by the board and the owner a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1020 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the complete request is filed.

2. After the change under subdivision G 1 of this section is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision G 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9 VAC 5-80-990. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requests for permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-980 or as administrative amendments under 9 VAC 5-80-970.

2. Significant amendment procedures shall be used for those permit amendments that:

- a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

C. The provisions of 9 VAC 5-80-1020 shall apply to applications made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-1000. Reopening for cause.

A. A permit may be reopened and revised in any of the following situations:

1. Additional regulatory requirements or changes to existing requirements become applicable to emissions units or pollutants covered by the permit.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be revised to assure compliance with the applicable regulatory requirements or that the conditions of the permit will not be sufficient to meet all of the standards and requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1010. Enforcement.

A. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable standards.

B. Regardless of the provisions of 9 VAC 5-80-950, the board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source or emissions unit which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of 9 VAC 5-80-10 and Articles 8 (9 VAC 5-80-1700 et seq.) and 9 (9 VAC 5-80-2000 et seq.) of this part.

C. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of regulations of the board.

D. Violation of regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5-170-120 and 9 VAC 5-170-130 and §§ 10.1-1309, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

E. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit.

F. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection B of this section.

G. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

9 VAC 5-80-1020. Public participation.

A. Prior to the decision of the board, permit applications for permits containing provisions that are necessary for the permit to be federally enforceable shall be subject to a public comment period of at least 30 days.

B. When a public comment period is required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment on the information available for public inspection under the provisions of subsection A of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and tentative determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all affected local air pollution control agencies, to all states sharing the affected air quality control region, to the regional administrator of the U.S. Environmental Protection Agency, and to any other governmental entity required to be notified under state or federal law or regulation.

C. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to reconsider the tentative determination of the board. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

1. The name, mailing address and telephone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative;
3. The reason why a hearing is requested; and

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the decision of the board.

D. The board will normally review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper; and normally within 30 calendar days following the expiration of the public comment period will grant a public hearing if it finds the following:

1. There is significant public interest in the permit application in question;

and

2. There are substantial, disputed issues relevant to the permit application in question.

E. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of procedures for the public hearing and for the final decision under this section.

F. If the board decides to hold a public hearing, the hearing will normally be scheduled at a time between 30 and 60 days after mailing the notification required in subsection E of this section.

G. The procedures for notification to the public and availability of information used for the public comment period or provided in subsection B of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

9 VAC 5-80-1030. General permits.

A. The requirements for issuance of a general permit are as follows:

1. The board may issue a general permit covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same

or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units subject to a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General permits shall be issued in accordance with § 9-6.14:4.1 C 11 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit.

b. The criteria to be used in determining which stationary sources or emissions units qualify for the general permit.

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category.

d. A narrative statement of the estimated air quality impact contributed by the stationary source or emissions unit category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by stationary sources or emissions units to request coverage under the general permit.

f. A brief description of the comment procedures required by 9 VAC 5-80-1020.

B. The requirements for application for a general permit are as follows:

1. Stationary sources or emissions units that would qualify for a general permit shall apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that become subject to the general permit after it is issued to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall issue the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for issuance of a general permit are as follows:

1. The board shall grant the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. The issuance of a permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9 VAC 5-80-1020.

3. A response to each general permit application may not be provided. The general permit may specify a reasonable time period after which a stationary source or emissions unit that has submitted a complete application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is covered by the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The requirements for enforcement of a general permit are as follows:

1. The stationary source or emissions unit shall be subject to enforcement action under 9 VAC 5-80-1010 for operation without a permit issued under this article if the stationary source or emissions unit is later determined by the board or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

9 VAC 5-80-1040 Review and evaluation of article.

A. Prior to April 1, 2001, the department shall perform an analysis on this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article, (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this article, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements, and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal this article or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

HISTORICAL NOTES:

Derived from: Part VIII of VR 120-01 (§ 120-08-04)

Effective Date: January 1, 1985

Promulgated: January 1, 1985

Amended: July 1, 1991

Amended: April 1, 1998

I:\OPD\REG\VAC\805